

### **REMARKS**

Claims 1-15 are pending in the subject application. Claims 1, 3, 5, 7, 8, 11, 12, and 13 are amended and claims 17-23 are added. Applicants submit that the amendments herein introduce no new matter, support therefore being found throughout the application as originally filed (e.g. see U.S. Application Publication No. 2004/0135881 at [0014], [0016], [0048], [0056]-[0058]). Reconsideration of the previous rejections in light of the remarks that follow is respectfully requested.

#### **1. 35 U.S.C. §102 Rejections**

Claims 1-4 and 11 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,369,317 to Shurcliff (hereinafter “Shurcliff”). Applicants respectfully traverse. However, in the interest of expediting prosecution, and in no way acquiescing to the validity of the Examiner’s rejection, Applicants have amended the claims.

Applicants recite, in claim 1, a method for detecting an object from its background or surroundings comprising: viewing an area with a viewing device, while selectively and varyingly changing the sensitivity of the viewing device to certain wavelengths of light and determining the presence of an object when a visual difference between the object and background is discerned when the sensitivity of the viewing device is changed to a certain mixture of wavelengths of light wherein the visual difference between the object and background is a difference in color or tonality. As set out, the sensitivity of the viewing device is changed to wavelengths in the UV range and/or the IR range. Applicants further recite, in claim 11, an apparatus for detecting an object from its background or surroundings comprising an electro-optical viewing device being capable of detecting light in one of the ultraviolet (UV) range, the visible range, the near infrared or the far infrared; and a mechanism, disposed between the object and the electro-optical viewing device, configured and arranged to selectively and varyingly change the optical input to the electro-optical viewing device lying in the ultraviolet (UV) and/or the infrared range, wherein as the optical input to the device is varied, the device provides a visual difference between the color or tonality of the object and the background. As noted by Applicants, by providing a mixture of input of visible and one or more of IR and UV,

particularly a mixture of visible, IR and UV, it is more difficult for materials such as camouflage to always match its background (e.g. see [0057][0058]).

Shurcliff, on the other hand, provides for spectrally rearranged reproduction methods. In particular, according to Shurcliff, a plurality (e.g. three) photographs are made simultaneously with sharp cutting filters which pass narrow bands in the visible range (540 nm, 650 nm, and 690 nm) and the negatives are then used to produce color prints using the three primary colors (red, blue, and yellow). As a result, objects that show strong reflectance at 540 nm appear red, those at 650 appear blue, and those at 690 appear yellow. According to Shurcliff, this makes it possible to distinguish between shades of green. As further provided by Shurcliff: “Of course, the present invention will not distinguish between natural green and an artificial green which is a perfect spectrophotometric match” (col. 1, line 46 – col. 2, lines 23).

Clearly Shurcliff at least does not teach or suggest Applicants’ methods and apparatus for detecting an object from its background or surroundings, wherein a viewing device is used to view an area while selectively and varyingly changing the sensitivity of the viewing device to certain wavelengths of light in the UV range and/or the IR range. Further, there is no teaching or suggestion to modify Shurcliff’s selection of filters which are specifically selected by Shurcliff so as to produce color prints as described by Shurcliff.

Thus, claims 1 and 11 are patentable over Shurcliff. Claims 2-4 (and new claims 17-23) depend from claims 1 and 11 and, thus, also are patentable over Shurcliff. Reconsideration and withdrawal of the rejection is respectfully requested.

## 2. 35 U.S.C. §103 Rejections

### ***Shurcliff and Miller***

Claims 5-10 and 12-14 are rejected under 35 U.S.C. §103(a) over Shurcliff and U.S. Patent No. 5,940,183 to Miller (hereinafter “Miller”). Applicants respectfully traverse.

As set out above, Shurcliff at least does not teach or suggest Applicants’ method or apparatus wherein with a viewing device an area is viewed while selectively and varyingly

changing the sensitivity of the viewing device to certain wavelengths of light in the UV range and/or the IR range.

Miller describes a reflectometer that is used in the clinical field for diagnostic testing of test elements/assays wherein the reflectometer measures optical radiation reflected from the test element/assay. In accordance with Miller's design, a plurality of filters having unique thicknesses and bandpasses are used to automatically correct for longitudinal chromatographic aberrations caused by non-collimated light passing through.

Thus, it is respectfully submitted that Miller describes a very different device and use of filters than Applicants and Shurcliff. As such, it is submitted that there would be no motivation to combine the features of Miller with those of Shurcliff. Still further, even if Miller and Shurcliff were combined, Applicants' methods and apparatus still would not be taught or suggested. For Example, according to Miller, the filters pass narrow bands in the visible range such as those ranging from 340-680 nm (see Table 1).

Thus, claims 1 and 11 are patentable over Shurcliff and Miller. Claims 5-10 and 12-14 (and new claims 17-23) depend from claims 1 and 11 and, thus, also are patentable over Shurcliff and Miller. Reconsideration and withdrawal of the rejection is respectfully requested.

***Shurcliff, Miller, and Korniski***

Claim 15 is rejected under 35 U.S.C. §103(a) over Shurcliff, Miller, and U.S. Patent No. 6,646,799 to Korniski et al ("Korniski"). Applicants respectfully traverse.

As set out above, Shurcliff at least does not teach or suggest Applicants' method or apparatus wherein with a viewing device an area is viewed while selectively and varyingly changing the sensitivity of the viewing device to certain wavelengths of light in the UV range and/or the IR range. Further, there is no teaching or suggestion to modify Shurcliff in view of Miller and, even if such a modification was made, Applicants' method and apparatus still would not be taught or suggested.

Kornisiki is cited as allegedly describing a system wherein multiple energy bands are combined to improve scene viewing wherein multiple viewing bandpasses are successively and separately added into the image forming sensitivity of a color viewing device. Without agreeing with or acquiescing to this assertion, it is submitted that even if this was taught by Korniski, the above-noted deficiencies in Shurcliff and Miller still would not be remedied.

In view thereof, claims 1 and 11 are patentable over Shurcliff, Miller, and Korniski. Claim 15 (and new claims 17-23) depend from claims 1 and 11 and, thus, also are patentable over Shurcliff, Miller, and Korniski. Reconsideration and withdrawal of the rejection is respectfully requested.

### **CONCLUSION**

It is respectfully submitted that the subject application is in a condition for allowance. Early and favorable action is requested. If for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge Deposit Account No. **04-1105**, under Order No. 58096(71106).

Respectfully submitted,

Dated: January 13, 2010

By: /Lisa Swiszc Hazzard/  
Lisa Swiszc Hazzard  
Registration No.: 44,368  
EDWARDS ANGELL PALMER & DODGE  
LLP  
P.O. Box 55874  
Boston, Massachusetts 02205  
(617) 517-5512  
Attorneys/Agents For Applicant